IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 635 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.N.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GULSHANKUMAR ARORA

Versus

DEPUTY CONSERVATOR OF FOREST

Appearance:

MR A P PATEL for the Petitioner.

Mr.B.D.Desai, ADDL. PUBLIC PROSECUTOR for the Respondents.

CORAM : HON'BLE MR.JUSTICE D.N.PATEL

Date of decision: 14/12/2004

ORAL JUDGEMENT

Rule. Learned APP Mr. B.D.Desai waives service of notice of Rule on behalf of the respondents.

2. The present Criminal Revision Application has been preferred against the judgement date 27th July,

2004 in Criminal Appeal No. 11 of 2004 passed by the learned Sessions Judge, Valsad, whereby the order dated 6th May, 2004 passed by the Deputy Conservator of Forests, Valsad (North) of confiscation of vehicle in question has been confirmed.

3. Brief facts leading to this Criminal Revision Application are as under:

Upon an intelligence received by police officers, on 21st February, 2003, while patrolling on national highway no. 8 at 21.30 hours near Amrutsar Hotel on the side of the main road, a truck bearing registration no. DL 1 GB 4001 was lying unattended. It was found that the said truck was loaded with wooden logs of Kher. Neither the owner, nor driver nor cleaner of the said truck was found nearby. The weight of wooden logs was approximately 9580 kgs. and the same was seized alongwith truck by drawing a necessary panchnama. Thereafter, an intimation was given to Delhi Transport Authority on 26th March, 2003 and from that office vide letter dated 9th April, 2003, the owner of the truck i.e. the present applicant was informed to contact forest officer at Valsad. The applicant informed the Forest Officer, Valsad, for the first time, on 20th May, 2003 that the truck in question was assigned to the driver of the applicant who is working with him since last 12 months who is also working as per the order and direction of the applicant and was sent to Ulhasnagar with goods to be unloaded. The said truck had reached Ulhasnagar on 19th February, 2003. Thereafter, the driver was informed to load other goods from Dhanraj Golden Transport company, but instead of doing so, the driver of the applicant might have loaded forest produce and this is how the truck was confiscated. Thereafter the present applicant was given a notice under section 61 of the Indian Forest Act (hereinafter referred to as "The Act") on 30th May, 2003. No reply was given by the applicant, but thereafter, the applicant has given two statements, firstly on 9th June, 2003 to the effect that the driver of the truck is working since last more than 12 months and is very obedient but the offence has not been committed at the behest of the applicant. Neither the truck driver nor the truck cleaner has come forward to the Deputy Conservator of Forest, nor the applicant who is the employer of the driver has co-operated in the inquiry and whereabouts of the driver is not given by the applicant. Even in the second statement, the applicant has maintained his say. This is how defence has been raised by the applicant which is nothing but a bare assertion of facts. The Deputy Conservator of Forests has thereafter passed an order of confiscation of truck

under section 61A (As per Gujarat amendment) of the Act. The said order was challenged by preferring Criminal Appeal NO. 11 of 2004 before Sessions Court, Valsad which has been dismissed by judgment and order dated 27th July, 2004. Hence, the present Revision Application has been filed by the applicant truck owner.

4. The learned counsel for the applicant submitted that no such offence as alleged by the respondents has ever been committed by the applicant with the help of truck in question bearing registration no. DL 1 GB 4001 and the said offence, if at all, is ultimately proved to have been committed, then there is no knowledge of the owner of the truck nor there is any connivance on the part of the applicant-truck owner, in committing the said forest offence and therefore, the truck confiscated under section 61-A of of the Act may be released subject to appropriate conditions and the judgment and order passed by the learned Sessions Judge, Valsad in Criminal Appeal No. 11 of 2004 deserves to be quashed and set aside. It is also submitted by the learned counsel for the applicant that two statements have been given by the applicant in pursuance of the show cause notice issued by the respondent Forest Officer wherein it is consistently stated by the applicant that the applicant has no knowledge that the driver has committed any such alleged forest offence nor there is any connivance on the part of the applicant in committing the forest offence with the help of the driver as alleged by the forest officer and therefore also, the judgment and order passed by the learned Sessions Judge deserves to be quashed and set aside.

5. Learned Additional Public Prosecutor for the respondents submitted that the truck in question was found by the police officers during patrolling on national highway no. 8 on 21st February, 2003 at 21.30 hours, wherein forest produce being wooden logs of "kher" were found having weight of 9580 kgs. The same was seized alongwith the truck by drawing a necessary panchnama and the offence was registered. Thereafter, information was given to Delhi Transport Authority, where the said truck was registered and wherefrom the owner of the truck, that is, the present applicant was directed to contact the office of the Forest Officer, Valsad. A show cause notice dated 30.5.2003 was issued to the applicant under section 61 of the said Act. The applicant had given a statement on 9th June, 2003 that the truck drier, namely Mohmed Shaikh Mohmed who is working with him since last more than one year is working as per his orders and directions, but the applicant pleaded ignorance about the

presence of the driver. He has also stated that in fact, the truck was sent to Ulhasnagar and thereafter from Dhanraj Gold Transport Company Thane, some other goods was to be loaded but instead of doing that, the driver of the truck has unauthorisedly loaded wooden logs of kher and this is how the offence might have been committed by the driver alone which is without the knowledge or connivance of the owner of the truck and therefore, the present applicant had requested to release the truck. It is also submitted by the learned APP that though notices have been issued to the driver, he did not remain present and he has ran away leaving the truck on the national highway no. 8. Eventhough the applicant is the owner of the truck and the driver is the employee of the applicant, the applicant is not co-operating, in the inquiry. The applicant is not revealing correct address and whereabouts of the truck driver. It is also submitted by the learned APP that though the truck had reached Ulhasnagar on 19.2.2003 and from Dhanraj Golden Transport, though other goods was to be loaded, no care has been taken by the applicant until he was informed by the Delhi Transport Authority in the month of March, 2003. The truck was seized on 21st February, 2003. Eventhough the owner has not received any goods from Golden Transport Authority, Thana, no care of either goods or of truck has been taken by the applicant. forest produce was found in the truck, approximately weighing about 9580 kgs. wooden logs of kher. No reply of notice has ever been given by the applicant. The learned counsel applicant has also admitted that except those two statements given by the applicant, reply of the show cause notice has not been given. Even the reply of the applicant, if read accurately, it reveals the fact that the driver was working at the back and call of the applicant. Burden of proof, is upon the applicant. It is the applicant who has to prove that he had no knowledge of committing offence by his driver and he had taken all the reasonable steps to avoid to commit the forest offence. The applicant has failed to discharge the burden of proof. It is also submitted by the learned APP that thus, in view of the provisions of section 52 (as per Gujarat amendment) to be read with section 61-A of the Act, Forest Officer has a reasonable belief that the truck has been used in committing the offence. There are cogent and convincing reasons as referred to in the order passed by the Deputy Conservator of Forest dated 6th May,2004 that the forest offence has been committed and the truck in question bearing Registration no. DL 1 GB 4001 is used therein. It is also submitted by the learned APP that as per section 61B(2) of the Act, the applicant has miserably failed to prove that the forest

offence was committed without knowledge or connivance of the owner himself. The onus of proving the absence of knowledge and absence of connivance is upon the applicant and from those two statements, given by the applicant, it cannot be said that the owner has proved the fact that forest offence was committed without his knowledge or without the connivance of the applicant. Bare assertion cannot substitute proof. There is not an iota of evidence presented by the applicant before Forest Officer to the effect that the applicant has taken any step for preventing the truck from being used in the offence. Even from the conduct of the applicant, namely, though the truck had reached Ulhasnagar on 19th February, 2003, for unloading of the goods and though thereafter some other goods was to be loaded from Dhanraj Gold Transport, neither the truck nor the goods have been received by the applicant within reasonable time from 19th February, 2003, the knowledge of applicant is revealed. The driver of the truck had left the truck on national highway no. 8 and had ran away and the said truck was found with forest produce, namely wooden logs on Kher being approximately 9580 kgs. Neither the truck driver nor the cleaner were found out nor the applicant had taken any care of knowing even the fact where the truck was lying. Behaviour of a bonafide owner would have been different than what is of the applicant. This is how the knowledge and connivance of the applicant in committing the forest offence has been believed by the Deputy Conservator of Forest. The cumulative effect of all the aforesaid facts and circumstances provides sufficient reasons whereby the Deputy Conservator of Forest has a reason to believe that forest offence has been committed with the help of the truck in question and therefore, the order passed by the Deputy Conservator of Forests confiscating the truck in question under section 61-A of the Act is true and correct which has been confirmed by the learned Sessions Judge, Valsad in the appeal vide his order dated 27th July, 2004. There is no infirmity in the order passed by the Sessions Court, Valsad. There is no error of fact much less of law in the order passed by the Deputy Conservator of Forests as well as by the Sessions Court, Valsad.

6. The learned Additional Public Prosecutor has also relied upon the judgment delivered in the case of State of West Bengal vs. Gopal Sarkar reported in 2002, SCC (Criminal), 161. He further submitted that in view of the above facts and circumstances, the present Criminal Revision Application deserves to be dismissed and hence this Court should not exercise its revisional jurisdiction in this peculiar set of facts.

7. The relevant provisions of law which are required to be referred, especially sections 52 (Gujarat amendment) 61-A (Gujarat Amendment) and 61-B (Gujarat Amendment) of the Indian Forests Act, 1927 read as under:

"52. SEIZURE OF PROPERTY LIABLE TO CONFISCATION : (1) When there is reason to believe that a forest offence has been committed in respect of any forest produce, such produce, together with all tools, boats, vehicle or cattle used in committing any such offence, may be seized by any Forest officer or Police Officer.

(1A) Any Forest Officer or Police Officer may, if he has reason to believe that a vehicle has been or is being used for the transport of forest produce in respect of which there is reason to believe that a forest offence has been or is being committed, require the driver or other person in charge of such vehicle to stop the vehicle and cause it to remain stationary as long as may reasonably be necessary for examination of the contents in the vehicle and inspection of all records relating to the forest produce and in possession of such driver or other person in charge of the vehicle or any other person in the vehicle.

(2) Every officer seizing any property under this section shall place on such property a mark indicating that the same has been seized, and shall, as soon as may make a report of such seizure :

(a) where the offence on account of which the seizure has been made is in respect of the forest produce which is the property of the State Government or in respect of which the State Government has any interest, to the concerned authorised officer under section 61A and

(b) in other cases, to the magistrate having jurisdiction to try the offence on account of which the seizure has been made."

Provided that, when the forest produce with respect to which such offence is believed to have been committed is the property of Government and the offender is unknown, it shall be sufficient if the officer makes, as soon as may be, a report of the circumstances to his official superior.

61A: Confiscation by forest officer in certain cases (1) Notwithstanding anything contained in the foregoing provisions of this chapter or any other law for the time being in force, where a forest offence is believed to have been committed in respect of forest produce which is the property of the Government, the officer seizing the property under sub-section (1) of section 52 shall,

without any unreasonable delay, produce it, together with all tools, ropes, chains, boats, vehicles, carts and cattle used in committing such offence before an officer authorised by the Government in this behalf, by notification in the Official Gazette, not being below the rank of an Assistant Conservator of Forest (hereinafter referred to as the "authorised officer").

(2) Where an authorised officer seizes under sub-section (1) of section 52, any forest produce which is the property of the Government or any such property is produced before the authorised officer under sub-section (1) and once he is satisfied that a forest offence has been committed in respect of such property, such authorised officer may, whether or not a prosecution is instituted for the commission of such forest offence, order confiscation of the property so seized together with all tools, ropes, chains, boats, vehicles, carts, cattle, and other contrivances used in the commission of such offence.

(3) Where the authorised officer, after passing an order of confiscation under sub-section (2) is of the opinion that it is expedient in the public interest so to do, he may, order the confiscated property or any part thereof to be sold by public auction.

(4) Where any confiscated property is sold as aforesaid, the proceeds thereof, after deduction of the expenses of such auction or other incidental expenses relating thereto shall, where the order of confiscation made under section 61A is set aside or annulled by an order under section 61C or 61D, be paid to the owner thereof or to the person from whom it was seized as maybe specified in such order.

61B: issue of show cause notice before confiscation under section 61A: (1) No order confiscating any forest produce or tools, ropes, chains, boats, vehicles, carts, cattle or any contrivances shall be made under section 61A except after notice in writing to the person from whom it was seized and considering his objection if any:

Provided that no order confiscating a motor vehicle shall be made except, after giving a notice in writing to the registered owner thereof, if in the opinion of the authorized officer it is practicable to do so and considering his objections, if any.

(2) Without prejudice to the provisions of sub-section (1), no order shall be made under section 61A, if the owner of the tools, ropes chains, boats, vehicles, carts, cattle or any other contrivance, proves to the satisfaction of the authorised officer that it was used in carrying forest produce without the knowledge or connivance of the owner himself, his agent, if any, and

the person in charge of the tool, rope, chain, boat, vehicle cart and cattle or any other contrivance and that each of them taken all reasonable and necessary precautions against such use."

From the aforesaid provisions, it is clear that the respondent have got all power to seize the vehicle if a forest officer has a reason to believe that with help of the said vehicle, a forest offence has been committed in respect of any forest produce. In the present case, the truck was left unattended and was lying on national highway no. 8, near Amritsar hotel. Wooden logs weighing 9580 kgs. of kher was lying therein. Neither owner, nor driver nor cleaner was available thereat. Necessary permit, bill, licence to carry forest produce was not given, and therefore, seizure of the property in question, that is, forest produce as well as the vehicle was justified under section 52 of the Act as has been done in the present case on 21st February, 2003 by drawing a requisite panchnama.

8. After seizure of the aforesaid property, notice was issued on 30th May, 2003 to the applicant, as to why the said property should not be confiscated. No reply of the notice was given by the applicant. Nonetheless the fact remains that a statement was given by the applicant before Forest Officer on 9th June, 2003 that the truck was given to the driver for unloading of the goods at Ulhasnagar and thereafter for loading of the goods from Dhanraj Golden Transport Company, but instead of doing that, driver has committed the forest offence without permission, consent or approval of the applicant. Though truck had reached Ulhasnagar on 19th February, 2003, the applicant received neither the truck nor the goods from Dhanraj Golden Transport Company, knowingly remained silent for quite longer time. It appears from the facts of the case that it is thereafter, Delhi Transport Authority was informed by the Forest Officer, Valsad on 26th March, 2003 because registration of the truck was of Delhi, who in turn, informed the applicant vide letter dated 9th April, 2003 that the applicant may contact Forest Officer, Valsad for his truck and for the first time, on 20th May, 2003, a letter was written by the applicant through his lawyer pleading his ignorance about forest offence. Thus, for a number of days, the applicant has not taken any care of his truck nor of the goods, whether the same has been loaded from Dhanraj Golden Transport or not. The truck had started from Delhi on 14.2.2003, reached at Ulhasnagar on 19.2.2003 and it was to load other goods and was to return to

Delhi, but the owner of the truck has not done anything upto May, 2003. This conspicuous silence on the part of the applicant gives sufficient reason to believe to the Deputy Conservator of Forests that the vehicle in question has been used in committing the forest offence and the applicant has failed to discharge his burden as referred to under section 61-B(2) of the Act.

9. If we minutely read section 61-B and more particularly sub-section (2) thereof, it provides that if the owner of the vehicle has to prove to the satisfaction of the forest officer that the vehicle used in carrying forest produce was used, without knowledge or connivance of the owner himself. The owner has also to prove that he has taken all reasonable and necessary precautions against such use of the vehicle. Neither of the facts have been proved by the applicant in the present case. The burden of proof lies upon the applicant and not upon forest officer or authorised officer as referred under section 61-B of the Act. Unless such burden is discharged, the order of confiscation can be validly passed by the authorised officer under sub-section (1) of section 61-A of the Act of confiscation of the vehicle. Under section 61B(2) of the Act, the Legislature has imposed burden of proof on the owner that if the owner proves the following facts, then order of confiscation cannot be passed as envisaged in section 61A (1)of the Act.

"(i) No order confiscating any tools, rope, chain, boat, vehicle or cattle shall be made under section 61A if the owner of the tool, rope, chain, boat, vehicle or cattle proves to the satisfaction of the authorised officer that it was used in carrying forest produce without the knowledge or connivance of the owner himself, his agents, if any, and;

(ii) the person in charge of the tool, rope, chain, boat, vehicle or cattle, and that each of them had taken all reasonable and necessary precautions against such use."

Unless the aforesaid two facts are proved, the authorised officer can pass an order of confiscation of vehicle if he has a reason to believe that the forest offence has been committed in respect of the forest produce with the help of the vehicle in question. The words "reasons to believe" has not been defined under Indian Forest Act, 1927, but if we read with the help of section 26 of the Indian Penal Code, it reads as under:

"26. A person is said to have "reason to believe" a thing, if he has sufficient cause to believe that thing but not otherwise."

Thus, as per the provisions of Indian Forest Act, 1927, simultaneously two factors must be present for confiscation of vehicle, one is positive and another is negative. Positive part of the provision (sections 52 and 61A) refers that the authorised officer must have a reason to believe the use of the vehicle for a forest offence and satisfaction that forest offence has been committed, in respect of such property. So far as negative aspect is concerned, (section 61B(2)), no order of confiscation can be passed under section 61A if there is a proof that without knowledge or connivance of the owner of vehicle, his agent, if any, has used the vehicle in committing forest offence and similarly, no order of confiscation can be passed under section 61A, if there is a proof that the person in charge of a vehicle has taken all reasonable and necessary precautions against such use of the vehicle. If the aforesaid two factors are present simultaneously, then the order of confiscation cannot be passed. Thus, absence of knowledge and absence of connivance by the owner for the use of the vehicle as well as such person who is in charge of the vehicle must have taken all reasonable and necessary precautions against use of the vehicle, then only order of confiscation cannot be passed. If one is present and another is absent, then requirement of section 61B(2) of the Act, is not fulfilled and the case may not fall under an exception. Thus, for falling the case in exception, both the conditions referred to in section 61B(2) ought to be fulfilled. In the present case, the petitioner has failed to give any proof as to the essence for not to pass an order of confiscation as enumerated in section 61B(2) of the Act. The present petitioner has failed to discharge burden of proof lying upon him as per section 61B(2) of the Act.

10. As referred hereinabove, upon analysis of facts of the present case, there was sufficient reason for the Deputy Conservator of Forest for seizure of the vehicle under section 52 of the Act on 21st February, 2003 at 21.30 hours during patrolling when the truck was found unattended and was having approximately 9580 kgs. of forest produce, that is, wooden logs of kher without requisite pass or permit.

11. Thus, as referred to hereinabove, positive aspect is already present. Now, if we go to section 61B(2) of the Act, whether the owner has proved

his absence of knowledge or connivance and the fact that he has taken all reasonable and necessary precautions so that the truck in question is not being used in committing the forest offence. There are only two statements of the applicant. No other proof has been given by the applicant to discharge burden of proof as envisaged by sub-section (2) of section 61(B). No precautions, no reasonable care has been taken by the applicant so that the vehicle may not be used in committing the forest offence. On the contrary, eventhough the truck was not received, which had left Delhi on 14.2.2003 till May, 2003 by applicant after loading of goods from Dhanraj Golden Transport, the applicant has remained silent. Even the present applicant is not co-operating in the inquiry. As per the statement of the applicant, the driver of the truck was obedient one. Though driver was serving at the office of the applicant, he is not giving correct facts as to whereabouts of his driver. The driver is not coming before the concerned officer for giving his statement. The cumulative effect of all the aforesaid facts and circumstances is that the burden of proof, as envisaged upon the applicant under sub-section (2) of section 61B of the Act, is not discharged.

12. So far as findings of facts are concerned, there are consistent findings of facts. There is no error much less an error on the face of the record. There is no perversity in the orders nor there is any jurisdictional error. On the contrary, the orders passed by the Deputy Conservator of Forest, Valsad as well as by the learned Sessions Judge, Valsad are true and correct and in consonance with facts and law.

13. In view of the aforesaid facts and circumstances and interpretation of law, there is no substance in the present Criminal Revision Application. Accordingly, it is dismissed. Rule discharged.

(D.N.Patel,J)

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